

June 28, 2019

DISSEMINATION BY THE LIVINGSTON GROUP, LLC

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Wed 6/26, 2:21 PM

Dear Mr. President:

Attached is a letter from an American investor in Poland. He is at risk of losing half of his personal investment in a Polish foundry company, Zaklad Metalurgiczny (ZM).

We hope that you will elevate the issue of treatment of US investors in Poland by encouraging US officials in the State and Commerce Departments to engage their counterparts in Poland to carefully review his claim.

Sincerely,
Bob Livingston

Robert L. Livingston
www.livingstongroupdc.com

THE LIVINGSTON GROUP, LLC PROVIDES REPRESENTATION FOR ZAKLAD METALURGICZNY, THROUGH SEKCO OPERATING COMPANY. ADDITIONAL INFORMATION IS AVAILABLE AT THE DEPARTMENT OF JUSTICE, WASHINGTON, DC.

Hugh Aiken

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June 24, 2019

Honorable Donald J. Trump
President of the United States of America
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

American Investment in Poland

Dear Mr. President:

I am an American citizen at risk of losing half of my foundry company in Poland, Zaklad Metalurgiczny (ZM).

A former potential investor is claiming half of my company even though it backed out of an agreement to fund half of the purchase of ZM from Pratt & Whitney. For the last 12 years I have fought them in the courts in Poland. In 2010, the Supreme Court annulled the initial lower court decisions that ruled in my favor, thereby opening the door for half of the ZM shares to be taken for nothing.

The current Polish Government through the Ministry of Justice has established a process to review court decisions deemed incorrect. I am hopeful that the Prosecutor General will review my case. ZM and I have the full backing of Solidarnosc (Solidarity), the Polish labor union with a significant political history, which has submitted two letters in support of a review.

Since the purchase of ZM in 2007, I have worked with management and have rebuilt the foundry. Today we employ 960 people and sell castings and forgings to Pratt & Whitney, Safran, GE, AGGO, ABB Siemens and others in Europe and the United States.

Recently you successfully hosted President of Poland Andrzej Duda in Washington, DC, and in return he has invited you to visit Poland. I urge you raise the issue of the treatment of US investment in Poland. I also request the assistance of US officials in the Departments of State and Commerce in engaging their counterparts in Poland with respect to my case.

I have enclosed a background document for your convenience.

Thank you for your consideration.

Sincerely yours,



Hugh Aiken

Attached: Background of American Investment in Polish Foundry

Cc: President of Poland Andrzej Duda
Prosecutor General Zbigniew Ziobro
Ambassador Piotr Wilczek, Embassy of the Republic of Poland in Washington, DC
U.S. Secretary of Commerce Wilbur Ross
U.S. Secretary of State Mike Pompeo
U.S. Ambassador to Poland Georgette Mosbacher

AMERICAN INVESTMENT IN POLISH FOUNDRY

Hugh Aiken (Aiken) is a New Orleans-born, US citizen living in Paris, France. He previously served as Chairman and CEO of Atchison Casting Corporation, a Kansas foundry company listed on the New York Stock Exchange. He currently owns ZAKLAD METALURGICZNY (ZM), a foundry company in Poland.

ZM employs 960 people. It was originally part of a company acquired from the Polish Government by Pratt & Whitney (P&W). Because it was not capable of making castings for Pratt & Whitney engines, used obsolete equipment and was unprofitable, P&W spun it off as ZM in 2004 with a view to sell or close the operation.

Aiken, who had experience in the foundry business, in 2005 made an offer to P&W to buy ZM. He sought a financial partner and was introduced to Harpal Randhawa, owner of GEM Management Limited (GEM), a British Virgin Islands investment company. GEM agreed to help finance the purchase of ZM. Two days before the planned purchase in March 2007 GEM refused to provide its half of the investment due to Aiken's refusal to transfer money out of ZM to GEM. At closing in 2007, Aiken had to provide all the cash required for the purchase.

The company, managed by Aiken, subsequently became profitable in 2012. In a long series of Polish court cases, GEM has tried to claim half the company, even though it did not put up its half of the original investment. Aiken won the initial court case in 2008 and the appeal in 2009, but after GEM hired a lawyer with close ties to a Polish Supreme Court Justice, Aiken lost an appeal in the Polish Supreme Court in 2010 and then in the appeal court in 2011. The union representing the workers at ZM – Solidarnosc (Solidarity), a Polish labor union with a significant political history – supports Aiken.

In 2019, Aiken continues to fight GEM in the courts. GEM is getting close to achieving its goal of obtaining 50 percent of ZM (and of ZAMCO, the holding company) for nothing. In such case Aiken and ZM management would lose half of ZM, which they bought and built.

REQUEST FOR ASSISTANCE

Aiken is seeking the support of the US Government for ZM before the Polish Government. In particular, for US officials in the Departments of Commerce and State and other relevant agencies, encouraged by Senators and Members of Congress, to engage with their Polish counterparts.

The current Polish Government has established through the Ministry of Justice, a process for reviewing court decisions deemed incorrect or corrupt. Only a couple of decisions have actually been reviewed to-date. Aiken has filed a request for the review of the appeal court 2011 judgement. The objective is to have the ZM case reviewed and ultimately overturned by the Polish General Prosecutor.

TIMELINE

- In 2002, Pratt & Whitney (P&W) buys WSK Rzeszow (WSK), a company that manufactures aircraft engines, from the Polish government. In 2004, P&W creates ZAKLAD METALURGICZNY (ZM) and spins off obsolete WSK iron and aluminum foundries, forge and machine shop, preparatory to their sale or closure.
- In June 2005, Hugh Aiken (Aiken), an American foundry industrialist, receives the sales prospectus, visits ZM and performs due diligence. In September, he submits a preliminary offer to buy ZM. Simultaneously Aiken searches for a financial partner to participate in funding the project.
- In November 2005, Aiken signs a Foundry Investment Agreement (FIA) with private equity firm GEM Management Limited (GEM), which is incorporated in the British Virgin Islands and owned by Harpal Randhawa. GEM agrees to invest between \$1 and \$4 million to buy ZM with Aiken. Aiken agrees to negotiate the acquisition, provide \$1 million toward the purchase, and manage ZM.
- From November 2005 to March 2007, Aiken works at ZM without pay while negotiating with P&W regarding the terms of sale and the price for ZM.
- In 2006, Aiken incorporates ZAMCO Sp. Z o. o. (ZAMCO) as a Polish holding company to buy ZM, and transfers half of the shares of ZAMCO to GEM in return for GEM signing the FIA and committing to invest. GEM provides \$100,000 of the \$200,000 deposit required by P&W.
- On March 16, 2007, ZAMCO buys ZM from P&W for \$1,500,000 (with expenses, a total cost of approximately \$1,803,000). GEM does not attend the closing, and does not provide the financing to ZAMCO as agreed to in the FIA. GEM withholds financing because Aiken and ZM management refuse to pay GEM \$1,000,000 in cash from the working capital of ZM.
- Aiken borrows the missing funds at the last moment and wires the remaining \$900,000 (that GEM failed to provide) to ZAMCO on the morning of the closing, thereby allowing ZAMCO to pay P&W and complete the act of sale.
- Aiken requests GEM to provide the missing funds. GEM agrees to pay half of the ZAMCO capital increase within 2 weeks, but does not pay anything within the new deadline, or ever. Aiken repays GEM the \$100,000 which it lent to ZAMCO prior to the closing.
- In July 2007, GEM sues ZAMCO, claiming that the shares to which Aiken subscribed in order to fund the acquisition are invalid. The cancellation of these shares would effectively mean that GEM owns half of ZAMCO and half of ZM, without having paid a cent for any shares in ZAMCO or ZM, and after having breached its contract to fund half of the purchase of ZM at the closing of the act of sale.

- During the period 2008 to 2011, Aiken invests an additional \$1 million in ZM, and ZM borrows \$6 million from banks, to accomplish \$7 million of capital investments in ZM for new equipment, environmental clean-up and technical training, and to bring ZM operating results to break even.
- In October 2008, the court of first instance in Rzeszow, Poland rules against GEM, saying that GEM had decided not to invest in ZAMCO and ZM. The result is that Aiken and the ZM managers, who bought 16% of ZAMCO/ZM from Aiken, own 99+% of ZAMCO and ZM, after having paid 100% of the price. The appeal court in Rzeszow upholds this decision five months later in March 2009.
- In 2009, GEM's lawyer at SK&S in Warsaw, appeals to the Polish Supreme Court, with which it has strong ties.
- In 2010, the Supreme Court annuls the lower court's judgements, saying that Aiken acted in bad faith by subscribing to the whole capital increase in ZAMCO to fund the purchase of ZM. This could have the eventual effect of canceling 99% of Aiken's shares (16% of which are owned by ZM management) and giving half of ZM to GEM for nothing.
- In 2011, the lower courts re-run the case and rule in favor of GEM, based largely on the 2010 Supreme Court opinion.
- In 2018, ZAMCO files a request with the Ministry of Justice to review the February 2010 Supreme Court judgement.
- In 2019, following the General Prosecutor's suggestion, ZAMCO amends this request to review the 2011 appeal court judgement instead of the supreme court annulment.
- In May 2019, KM NSZZ Solidarnosc (Solidarnosc), a highly respected Polish trade union, submits a letter to the General Prosecutor, Zbigniew Ziobro, in support of a positive consideration of ZAMCO's complaint against the 2011 appeal court decision.
- In response to a request by the Polish Department of Justice, Solidarnosc also submitted a 9-page explanation of why they considered the 2010 and 2011 rulings against ZAMCO to be illegal and unconstitutional.
- ZAMCO, Aiken and ZM management continue to fight GEM in the courts. GEM is getting close to achieving its goal of obtaining 50% of ZAMCO and ZM. In such case Aiken and ZM management, who paid over \$2 million and spent 12 years re-building ZM, would lose half of their company to GEM who paid nothing.
- In May 2019, ZAMCO files an appeal against the recent ruling in one of the most important cases in the series of judicial proceedings. This ruling, if upheld, could effectively grant GEM control of half of ZM. Since 2010, the lower courts have followed the 2010 Supreme Court opinion that Aiken acted in bad faith in 2007 when he paid P&W the full price for ZM after GEM refused to invest.